

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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JONATHAN MONSARRAT,

Plaintiff,

v.

BRIAN ZAIGER,

Defendant.

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CIVIL ACTION NO.  
1:17-cv-10356-PBS

**BRIAN ZAIGER'S OPPOSITION TO  
MONSARRAT'S MOTION FOR LEAVE  
TO FILE A REPLY**

Although reply briefs are often helpful, Monsarrat should not be granted leave to file a reply to the opposition to his motion for judgment on the pleadings as he seeks in his fifth motion in two weeks (Dkt. No. 100).

The motion is but one more vexatiously filed pleading, that even hints at more to come. Dkt. No. 100-1 at 2 n. 1. Monsarrat's counsel refuses to confer, as required by Local Rule 7.1, despite it repeatedly being pointed out. See Exhibit 1. He should not be rewarded with leave to file a reply when he refuses to litigate in good faith.

Neither is there merit in the proposed reply. It relies on the misconstruction of the Counterclaim (Dkt. No. 24) as setting forth that Mr. Zaiger is pursuing his claim under 17 U.S.C. § 512(f) as an "infringer" as opposed to as a "service provider". Dkt. No. 101-1 at 3. Nothing in the Counterclaim sets forth any specific allegation where Mr. Zaiger limits liability to his status as an alleged infringer; rather, it contested the underlying allegations of "infringement", necessary for a Section 512(f) claim by infringer and service provider alike. In fact, the counterclaim at ¶ 9 specifically discusses the interference by Monsarrat with the Encyclopedia

Dramatica website operation (*i.e.* its status as a service provider), separate and apart from the infringement allegation against Mr. Zaiger.

It is inconceivable that Monsarrat would repeat his arguments that there is no standing by highlighting that a takedown must occur. Dkt. No. 101-1 at 5-6. There was a takedown—Encyclopedia Dramatica took down the “JonMon” page in the wake of the takedown notice. And Mr. Zaiger, as alleged, suffered damages, as this interfered with his business, he was rendered fearful, and he was forced to incur attorneys’ fees to respond (ultimately in litigation) to Monsarrat’s bad faith notice. Although Monsarrat cites to *Opinion Corp. v. Roca Labs, Inc.*, No. 8:15-CV-811-17AEP, 2016 WL 6824383, at \*3 (M.D. Fla. Nov. 17, 2016), he fails to recognize the distinction—in that case, there was no takedown, but here, there was.

Moreover, Mr. Zaiger, as an individual alleged infringer, is barred from republishing the fair use material. Mr. Zaiger has recently been removed from his position as an Encyclopedia Dramatica administrator. See “Zaiger,” Encyclopedia Dramatica.<sup>1</sup> But, the current administrators refuse to allow the republishing of the page. See “Talk:Jonathan Monsarrat,” Encyclopedia Dramatica.<sup>2</sup> Such inability to republish on the website by the current service provider, extending the takedown, constitutes an injury.

Counsel for Mr. Zaiger would have been happy to try to discuss these issues in good faith, as is the purpose of Local Rule 7.1. Monsarrat has repeatedly refused. Perhaps, had he participated in good faith, he might have seen fit not

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<sup>1</sup> Available at: <<https://encyclopedia-dramatica.rs/Zaiger>> (last accessed Feb. 7, 2018).

<sup>2</sup> Available at: <[https://encyclopedia-dramatica.rs/Talk:Jonathan\\_Monsarrat](https://encyclopedia-dramatica.rs/Talk:Jonathan_Monsarrat)> (last accessed Feb. 7, 2018).

to even seek to reply. His refusal should not be rewarded, even though the filing of a misguided reply memorandum will not harm Mr. Zaiger, it harms the process.

Dated: February 7, 2018.

Respectfully submitted,

/s/ Marc J. Randazza

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### **CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on February 7, 2018.

/s/ Marc J. Randazza

Marc J. Randazza